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Mr. Chairman, members of the committee, thank you for extending to me the privilege to testify before you today regarding the changing relationship between states and the federal government in the area of environmental compliance and enforcement.

It is an area of government that is undergoing fundamental change, and will benefit from this type of public discourse and familiarity by the Congress.

Without being pejorative, I believe it was fair to characterize, until relatively recently, the relationship between the Environmental Protection Agency and the states as a "parent - child" relationship when it came to issues of compliance and enforcement.

I offer this metaphor not because I seek to inject a discussion of "family values" into the subject at hand, but because most of us can relate to the important social benefits of good parenting and child rearing. And we can also relate to the universal strains and tensions that occur in a family when the children grow up, take over the family business - in this case the nation's environmental protection, and eventually become the primary care givers.

We are now at that awkward stage.

Today, it seems hard to believe that in an earlier era we were concerned about unreliable states purposely lowering environmental standards in an effort to become

"pollution havens" that would become the preferred location for new and expanding businesses. In fact, there are now many examples across the country where states have adopted standards that are more protective than minimum federal standards. Indeed, environmental quality has become a selling point for states seeking to attract new business investment.

States have now matured to the point where they generally keep their rooms clean without being told. That's not to say our records are perfect, but they are certainly on par, and in some areas superior, to the federal EPA. In terms of providing basic deterrence, approximately 85 percent of the environmental enforcement that occurs in the United States today is conducted by state environmental agencies.

That's not to say we don't still need an effective federal enforcement presence. We do, and always will. But this is a remarkable good news story that needs to be more widely understood - both by the public generally, and by the EPA.

To help accomplish this, I wish to share two recent experiences in Massachusetts. The first illustrates the ill-will that can develop when state regulators are given mixed messages by federal overseers.

The second focuses on the importance of recognizing environmental enforcement as a *means*, not an end. With that comes the recognition that our information systems - what we are required to collect and report under federal rules - ends up shaping (and limiting) our protection strategies.

Third, an experience that shows EPA's offer of flexibility to states to test new, progressive compliance strategies is well-leavened with checks and balances to maintain state accountability. What needs more work is establishing similar accountability checks on EPA.

To understand the first scenario, some context is required. Under the conventional and still prevalent approach to environmental enforcement, air pollution inspectors go out and inspect air emissions, water pollution inspectors go out and inspect water pollution, hazardous waste inspectors go out and inspect waste management practices, etc. There is no cross-training or coordination.

This leads to inefficiencies not only for the regulator, but also for the business being inspected. One facility may have its operations interrupted two or three times for these so-called single-media inspections.

On the other hand we have one experience where a facility was inspected annually for compliance with its air permit - which it routinely passed - and all the while the

company was in plain view filling 40 acres of wetlands with hazardous waste. This is no way to conduct the public's business.

Moreover, federal requirements require state regulatory agencies to inspect the same small number of so-called major air pollution sources every year - sources that, not surprisingly, perform quite well in meeting air pollution standards. Left uninspected are literally thousands of a wide variety of smaller air pollution sources that are rarely if ever inspected, and cumulatively can be rich targets for lowering overall emissions. An example: the thousands of gasoline pumps across our state for which, under federal rules, we required the installation of expensive Stage II vapor recovery devices. Having required that major statewide investment in pollution control infrastructure, we had no way to ensure that in fact they were installed; were installed properly; and, in fact, were yielding the pollution reductions that were promised.

With this as background, you can appreciate why Massachusetts began an effort to redesign the way we do our work. We did the cross-training and developed "multi-media" inspections that would look at all aspects of a facility's compliance in one comprehensive review. And we sought EPA's permission to reduce the number of federally required inspections of the same few sources so we could redeploy our resources to visit facilities that in some cases had never before been inspected - including gas station pumps.

We asked. And we got more than an "OK." We got a pat on the back and an increase in our allowance. EPA actually gave us grants to help pay for our new comprehensive inspections of previously ignored facilities.

But one of the first lessons of parenting is to always have a united front. If Mom says "here's a little something extra, go out and have a good time," while Dad is saying "you're grounded and it's my way or no way," then you have a recipe for trouble.

And that's what we encountered last year when our air inspection program was targeted for an audit by EPA's Inspector General because our statistics for traditional air permit inspections dropped below their historic levels. It is hard to overstate the repercussions - on agency morale, on resources wasted, on public perception - when an aggressive, successful regulatory agency is singled out for an audit because they failed to meet historic targets. It's even more troubling when the efforts that led to that situation were not just sanctioned, but encouraged, by the same agency that is conducting the audit.

In the end, after considerable effort, we were able to successfully defend our honor and, more importantly, our results. But such mixed signals clearly serve as a disincentive to take the risk of innovation in the area of environmental compliance and enforcement.

Persistent problems continue. One example is the use of terms and definitions when the states and federal agencies talk publicly about their compliance and enforcement work. EPA uses the term "significant violator" as part of their standard inspection protocols for a limited number of large air pollution sources. That term is applied to any type of infraction, no matter how minor, from a large facility. The problem is, it conveys to the untrained ear an impression that says "significant *violation*." That is not necessarily the case and, in fact, rarely is. Moreover, it can wrongly imply that larger violations from smaller sources are less significant. That is clearly not the case.

There is also some hopeful progress in solving some underlying problems. We are now in the second year of an enforcement planning roundtable with EPA Region I, and it has provided a breakthrough. While the public would be appalled that this hasn't been happening routinely until recently, we are now for the first time sharing our enforcement plans and targets with each other up front. By doing this we learned, for example, that Region I was planning a targeted enforcement initiative aimed at drycleaners at exactly the same time that we were embarking on an alternative compliance program for that industry. To EPA's credit, they reprogrammed their resources and allowed the state program to go forward. We need more of this kind of coordination, and commend it to other states and regional offices as a model.

The second area for consideration is the role of measurement in affecting behavior - or the observation that what gets measured gets done. This, of course, creates conundrums for environmental regulators in the same way it creates challenges for other kinds of law enforcement. One example is the tradeoff between big penalty cases and large numbers of cases. Which number do you want to emphasize? Developing and winning big penalties and settlements requires more time and resources so the total number of cases typically declines. Casting a wider net and capturing a larger number of violators may mean less ability to land the big, headline enforcement cases.

The good news is that a growing number of individuals involved in environmental regulation are moving beyond such "bean counting" exercises and are now focusing on measuring the environmental results of our efforts (i.e., how much pollution has actually been reduced). This in turn, over time, will support what should be our

ultimate goal: judging our performance by tracking actual indicators of ambient environmental quality.

The states and EPA are in the early stages of progress in this area. The Performance Partnership Agreements - which are essentially negotiated "block grants" of federal assistance to state regulatory agencies, the development of national Core Performance Measures, and the New England Environmental Goals and Indicators Project are all good and complementary examples of progress.

Two items of cautionary advice as we proceed. First, we must all recognize that the development of new performance-based measures of success must *replace* the traditional bean counting exercises of the past, *not simply layered on top of what is already required*. Not doing so will only increase our work load without changing behavior.

This will mean that data that in some instances has been collected for over a decade will no longer be collected. This will inevitably lead someone, somewhere to panic - most likely the person who has been collecting that information. But the fact that "we have always done it this way" must no longer be a good enough reason to continue. We must be prepared to ask and answer the question, "Are we collecting the right information and are we using it effectively?"

Massachusetts, like every other state, is obligated under current federal rules to collect and report reams of data, at significant public and private expense, that is rarely if ever used. What we are now doing is putting ourselves on an "information diet." Like a good diet, that doesn't necessarily mean that we are going to eat less; it means we are going to eat better. We are collaborating with Massachusetts' environmental organizations and the business community to redesign our information management systems so we collect only the information we need, we only collect it once, that we put it to a productive use, and that non-confidential information is readily available to the public in a useful format. In some areas we plan to stop collecting data; in others we will begin collecting important information for the first time.

These changes will likely require some relief from existing federal requirements. This may be a fruitful area for further inquiry from this Committee.

My second cautionary piece of advice in this area is for the Congress and EPA to come together to be clear on exactly what is expected to meet the legislative intent of the recently enacted Government Performance and Results Act (GPRA). While it is useful to see GPRA prompt a re-examination of the actual end results of federal programs, I am concerned by reports that GPRA is being used by some at EPA as a

rationale to cling to the old system of "bean counting" statistics (i.e., number of inspections, number of penalties, etc.) to judge our environmental progress.

For GPRA to provide a positive benefit in the environmental area, it must, in my opinion, require EPA to report on actual environmental performance and results. Enforcement statistics are not an acceptable surrogate. If conventional enforcement statistics are allowed to suffice, it will be a difficult setback to those in state and federal government who are championing alternative approaches to environmental protection. It will serve to "lock in" the status quo and create a disincentive for innovation.

The third and final experience I wish to share with the Committee is an update on the progress we have made on Massachusetts' Environmental Results Program (ERP) since I last appeared before you. At that time, Massachusetts was negotiating a final project agreement under EPA's "Project XL" so we could benefit from increased federal flexibility. I reported receiving support in our regional EPA office, but apparent hesitation from Washington.

Our ERP, you may recall, aimed to eliminate environmental permits for various industry sectors in Massachusetts and instead establish simple performance standards that the affected companies would then annually certify to having met. Federal flexibility was key to avoid putting companies in potential double jeopardy (i.e., passing the state's self-certification process but not completely clearing every potential federal oversight requirement). As you may also recall, Massachusetts went forward with ERP without final EPA approval and rolled out the new performance-based, self-certification system to our drycleaning, photographic processing, and printing industries.

Today, we still do not have a final project agreement negotiated with EPA, but we do have a program that is living up to its name in providing real environmental results - results that would otherwise never have been achieved. Reductions in the emissions of known carcinogens, of volatile organic chemicals and metals.

Let me hasten to add that the failure to yet achieve a final project agreement with EPA has recently been as much our doing as theirs. While we have been close to an agreement for some time, our ERP continued to be met with healthy skepticism in some EPA offices. In order to gain EPA's unqualified support once-and-for-all, we slowed down our negotiations so we could achieve three things: 1) proof from our pilot project that the concept could work across a variety of different kinds and sizes of businesses; 2) proof that there would be measurable improvements to the environment; and, 3) proof that ERP is not backing away from effective environmental enforcement where necessary.

With the announcement of two major enforcement cases under ERP scheduled for later this week, we have met those three tests. We are now prepared to go back to the negotiating table with EPA to finally gain the federal flexibility we will need to expand this successful program to other industry sectors.

And this is where things get interesting. For while we have conceded to meet certain EPA conditions for timely reporting and accountability, we have yet to extract the converse commitment from EPA - that they will provide us timely reviews and approvals of our plans to expand our successful alternative compliance program. Specifically, EPA has requested that we meet certain timelines in being responsive to them, but will not make similar promises to us. While this may at first appear to be a trite issue of institutional pride, it is in fact fundamental to the whole nature of the relationship.

The only reason Massachusetts seeks a "Project XL" agreement with EPA is to gain expedited approvals for federal flexibility as we encounter regulatory "speedbumps" along the way where existing federal requirements are not easily accommodated into our new system of annual self-certifications. If we sign a final project agreement with EPA that does nothing more than offer the existing cumbersome, slow and unpredictable case-by-case approach to gaining such flexibility, then we have to ask ourselves if it is worth the effort, and just how supportive will EPA's enforcement office be of the whole Massachusetts ERP enterprise?

Going back to my original "parent-child" analogy, we are not just asking to have our curfew lifted. We are asking the folks we have to live with to extend the courtesy of sharing and coordinating schedules for the overall good of the household.

It is not an unreasonable request. And it will serve as an interesting test of the EPA's commitment to collaboration in demonstrating the effectiveness of alternative approaches for achieving environmental compliance.

Thank you for the invitation to appear before this Committee. I would be pleased to answer any questions you may have.